

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2280 OF 1996

The Superintendent, Thane Central

Prison, Thane & anr

.Petitioner.

Versus.

Rameshlal Ratanchand Chhajed & anr ..Respondent.

..

Mr.N.P.Deshpande Asst. Govt.Pleader for Petitioner

Mr.P.K.Dhakephalkar with Mr. Niranjan Shimpi and

Mr.Jagdish Reddy for Respondents

CORAM: A.P.SHAH AND
S.U.KAMDAR, JJ

DATE : 28TH SEPTEMBER, 2004

ORAL JUDGMENT (Per A.P.Shah, J)

1. Heard Advocates.

2. This writ petition is directed against the order passed by the learned District Judge, Thane in Civil Appeal No.422 of 1995 dated 23rd November, 1995. By the said order, the learned District Judge set aside the order of the Resident Deputy Collector, Thane in Eviction Case No.28/1993 dated 31st July, 1995 and the application of the present petitioners for eviction under section 4 of the Bombay Government

Premises (Eviction) Act, 1955, hereinafter referred

to for brevity's sake as the 'Act' was dismissed.

3. The facts leading to the petition are that proceeding under section 4 of the Act were initiated by the Superintendent of Central Prison, Thane alleging inter alia that under the agreement dated 31st December, 1946 the land admeasuring 54' x 36' belonging to the Central Prison, Thane was let out to Ratanchand Chhajed who died on 23rd February 1977 and his son the present respondent no. 1 is in occupation of the said accommodation. It was alleged that the terms and conditions mentioned in the agreement were binding on Ratanchand Chhajed and thereafter on his successors i.e. the present respondent no. 1. As per the terms of the agreement, the licensee shall not assign by lease or sublet the said plot of land without permission of the jail authorities and was not to erect a permanent structure. It was alleged that Ratanchand Chhajed had erected a structure in violation of the terms and conditions. It was further alleged that the present respondent No.1 had also committed breach of the several terms and conditions of the agreement. According to the petitioners, the structures erected by Ratanchand Chhajed were illegal without permission and were unauthorised and

by subletting the said structures, the respondent No. 1 has been profiteering for himself and causing loss and damage to the government property. The application was allowed by the Competent Authority namely the Resident Deputy Collector vide order 31st July, 1995. This order was challenged by, the respondent no. 1 in Civil Appeal No.422 of 1995 which was allowed by the learned District Judge vide impugned order dated 23rd November, 1995.

4. We have heard Mr. Deshpande learned Assistant Government Pleader appearing for the petitioners and Mr. Dhakephalkar for respondent no. 1. With the assistance of the learned counsel, we have gone through the judgments of the Competent Authority and of the District Judge. It appears that no evidence was led by the petitioners before the Competent Authority and in fact a joint purshis was submitted to the Competent Authority on 28th July, 1995 by Advocates for both the parties to the proceedings that they do not wish to lead oral evidence as they had agreed to argue the matter on the basis of the documents on record. In the absence of any evidence on record, it is difficult to accept the case of the petitioners that the structures were unauthorised or the respondent no.1 was profiteering by subletting the structures. But this apart it is brought to our

notice by learned counsel appearing for the respondent No.1 that the petitioners had earlier initiated proceedings in the year 1972 under section 7 of the Act making almost identical allegations of unauthorised construction and subletting. This application was allowed by the Competent Authority vide order dated 24th July, 1980. The matter was carried in appeal by the respondent no.1 being Civil Appeal No.126 of 1973. The learned District Judge vide order dated ... August, 1973 remanded the case back to the Competent Authority for a fresh decision in accordance with law. After remand, the Competent Authority considered the arguments of both the sides and came to the conclusion that the petitioners have failed to establish the ground of unauthorised construction and subletting. In this view of the matter, the present proceedings are clearly barred by resjudicata.

5. In the circumstances, there is no reason to interfere with the impugned order of the District Judge. Petition is therefore dismissed with no order as to costs. A.P.SHAH, J

S.U.KAMDAR, J